

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 707 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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M/S.SHANTILAL KHUBCHAND

Versus

STATE OF GUJARAT

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Appearance:

MR SV RAJU FOR MR CV PRAJAPATI for Petitioners  
MR MA BUKHARI, APP for Respondent No. 1  
MR BB NAIK, for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 27/03/97

ORAL JUDGEMENT

Rule. Learned APP Mr MA Bukhari for respondent No. 1 and learned counsel Mr BB Naik for respondent No. 2 waive service of Rule.

By way of this Special Criminal Application, the petitioners have challenged the order of the Additional Metropolitan Magistrate, Ahmedabad dated 30.12.1995

passed below Exh. 8 whereby the learned Magistrate allowed the application filed by the department and ordered that the documents produced with List Exh. 9 i.e. Documents No. 2 to 11, 13 to 18, 20 and 22 to 43 be exhibited.

I have read the order of the learned Magistrate. The learned Magistrate has proceeded on the basis that the proceedings against the accused are under the Income Tax Act. In fact, the complaint has been filed for the offences under Sections 177, 193, 196, 199 read with Sections 34, 109 and 114 of IPC. In view of this, provisions of Section 279 B of the Income Tax Act are not attracted. The conditions precedent for the application under Section 279 B is that there must be proceeding for prosecution of any person for offence under the said chapter.

In view of the aforesaid, this Special Criminal Application is allowed and the order of the learned Magistrate dated 30.12.1995 passed below Exh. 8 is set aside. The learned Magistrate is directed to pass a fresh order after hearing the learned counsels for the parties.

Rule is made absolute.

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